IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

CRL.A.No. 531 of 2000()

ST.1432/1999 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR DT.24.5.2000.

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APPELLANT: COMPLAINANT

DAVIS, S/O. THARAKAN DEVASSY,
ARIYANNUR DESOM,
KANDANASSERY VILLAGE,
TALAPPILLY.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS: ACCUSED & STATE

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1. **LISSIYAMA MATHEW,**
   W/O.KANNAMPILLY SUNNY,
   KANATTUKARA DESOM,
   KANATTUKARA P.O.,
   AYYANTHOLE VILLAGE,
   THRISSUR TALUK.

2. **STATE OF KERALA, REP.BY**
   PUBLIC PROSECUTOR, HIGH COURT OF
   KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 531 of 2000

Dated this the 21st day of February, 2007

Judgment

Appellant filed a complaint under section 138 of the Negotiable Instruments Act stating that cheque issued by the first respondent was dishonoured for insufficiency of funds. Originally, the case was posted before the Chief Judicial Magistrate, Thrissur. Thereafter, it was made over to Judicial First Class Magistrate's Court-III, Thrissur. According to the appellant, he was present on eleven posting dates, but, accused was never present. On 24.5.2000, when the case was posted, even though appellant and counsel were present, due to heavy rush, they could not enter inside the court and the accused was acquitted for absence of the complainant. When the accused was not present, presence of the complainant was absolutely not necessary. The impugned order is a stereo-typed order without application of mind. Even though accused can be acquitted under section 256 (1) of the Code of Criminal Procedure for the absence of the complainant, it should not be done mechanically. On the facts and circumstances of the case, the impugned order is set aside and the matter is remanded.

The complainant shall appear before the trial

court on 26.3.2007. Notice sent by this court was evaded. Anyway, since notice was not served, fresh steps should be taken by the complainant for service of notice to the first respondent/accused.

Appeal is allowed by way of remand.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy, J.

Crl. A. No.531 of 2000

Judgment

21-2-2007